IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.2436 OF 2004
IN
WRIT PETITION NO.9088 OF 2003

Shankar Pandurang Pagar — Applicant
vs.
M/s.Taparia Tools Ltd. — Respondent

Ms.Seema Sarnaik for the applicant.

Mr.S.M. Naik for the respondent.

CORAM : B.H. MARLAPALLE,J.

DATED : 15th September 2005

P.C.

Heard Ms.Seema Sarnaik, the learned counsel for the applicant, who is respondent in writ petition no.9088/03. The said petition has been admitted and the Award dated 24.9.2002 directing reinstatement of the applicant has been stayed on the condition that the wages payable to the workman from 24.9.2002 till the filing of the petition are deposited. As a result, the applicant could not be reinstated and, therefore, this application seeking the benefit of Section 17-B of the Industrial Disputes Act, 1947.

2. In its Award dated 214.9.2002 the Labour Court has denied the amount of back wages by recording a finding that the workman was gainfully self-employed during his

first unemployment. While opposing this application, the employer states that when the workman is self-employed, there is no question of granting the benefit of Section 17-B of the I.D.Act. No doubt the applicant-workman also has filed cross petition challenging the Award of the Labour Court to the extent of denial of back wages. However, that by itself would not be a prima facie evidence to show that he is unemployed.

3. The learned counsel for the employer states that when the applicant-employee was removed from service in 1981-82, his monthly emoluments were about Rs.1000/- and on account of being self-employed i.e. running a grocery shop he is earning much more amount monthly. As has been held by the Apex Court in the case of Dena Bank v. Kiritikumar T. Patel, 1998 I CLR 191, if Section 17-B application is allowed, the workman is required to be paid the monthly salary which he was drawing at the time of his termination.

4. Under the circumstances, there is no case made out to allow this application and, therefore, the same is hereby rejected.

5. So far as the alternative prayer for early hearing

of the petitions is concerned, the learned counsel for the workman is at liberty to take out a fresh application for the same which will be considered on its own merits.

(B.H. MARLAPALLE,J.)